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1 COMMONWEALTH OF
2 PENNSYLVANIA

3 v.

Traffic Court

4 GREGORY DILORETO

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7
8 A hearing held in the above-captioned
9 matter on Monday, September 27, 2001, commencing
10 at 1:53 p.m., before District Justice Frank J.
11 Abate, Jr., at City Hall, Traffic Court, 626
12 State Street, Erie, PA 16501.

13
14
15 For the Commonwealth:

16 James K. Vogel, Esquire
17 Office of the District Attorney
18 140 West Sixth Street
Erie, PA 16501

19 For the Defendant:

20 Craig A. Markham, Esquire
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Erie, PA 16501

23
24 Reported by Sonya Hoffman
25 Ferguson & Holdnack Reporting

I N D E X

KARL KELM

Direct Examination by Mr. Vogel 4

Cross-Examination by Mr. Markham.18

1 MR. VOGEL: Good afternoon, Your Honor.

2 THE COURT: This is the case of the Commonwealth
3 versus Gregory DiLoreto charged under the Vehicle
4 Code of driving a vehicle at an unsafe speed.
5 This is under Section 3361 of the Vehicle Code as
6 amended. And Mr. DiLoreto, are you represented by
7 counsel?

8 MR. DILORETO: Yes, sir.

9 MR. MARKHAM: Yes, sir. I'm representing him.

10 THE COURT: And you are?

11 MR. MARKHAM: Craig Markham.

12 THE COURT: I notice Mr. Vogel. Are you
13 representing the Commonwealth?

14 MR. VOGEL: I am, Your Honor.

15 THE COURT: And how does your client plead?

16 MR. MARKHAM: Not guilty.

17 THE COURT: With the plea of not guilty being
18 received, Mr. Vogel, you may proceed for the
19 Commonwealth.

20 MR. VOGEL: Thank you, Your Honor. We'll call
21 Karl Kelm.

22

23 K A R L K E L M, first having been
24 duly sworn, testified as follows:

25

DIRECT EXAMINATION

BY MR. VOGEL:

Q. Karl, would you please state your full name and occupation for the record.

A. Karl Kelm, Corporal with the Erie Police Department.

Q. Corporal Kelm, how long have you been with the Erie Police Department?

A. 29-plus years.

Q. And what is your current assignment, Corporal?

A. Traffic Accident Investigator.

Q. And how long have you been a Traffic Accident Investigator?

A. Over 12 years.

Q. Now, have you received any special schooling or education with regard to traffic investigation?

A. Yes. On-scene accident investigation first and second class.

Q. Okay. And when did you complete those?

A. Been some time ago. I'll say the early '90s.

THE COURT: Maybe to save some time, I've been in Traffic Court enough to know Corporal Kelm's resume and his qualifications. It's up to defense counsel if he asks to authenticate his credentials

1 any further.

2 MR. MARKHAM: I'm not sure what opinions he may be
3 offering. I understand he's an investigator of
4 traffic accidents; beyond that, I would admit that
5 he is qualified to talk about investigations of
6 accidents. But for the purpose of his testimony,
7 I'm not sure.

8 Q. For the record, Corporal Kelm, have you been
9 qualified as an expert in accident investigations in the
10 Court of Common Pleas previously?

11 A. Yes, I have.

12 Q. And allowed to give opinions as to speed?

13 A. Correct.

14 MR. VOGEL: Those are the purposes that he's been
15 called for today, as well.

16 MR. MARKHAM: I have a couple of questions on his
17 qualifications to determine the speed.

18 THE COURT: We'll give you an opportunity to
19 question the Officer.

20 MR. VOGEL: Thank you, Your Honor.

21 BY MR. VOGEL:

22 Q. Corporal Kelm, did you have an occasion to become
23 involved in the investigation of an accident that led to the
24 filing of this charge here today?

25 A. Yes, I did.

1 Q. Could you describe for the Court how you first
2 became involved and what you did?

3 A. I received a phone call at home on the morning of
4 4/13/2001, and was advised by the officer in charge that a
5 traffic investigator was needed at the accident at 14th and
6 Parade Street where a cruiser was involved with another
7 vehicle. There were two parties involved, and one of the
8 parties was extremely serious and her condition was unknown.

9 Q. Okay. And who was the other party that was
10 involved?

11 A. Officer DiLoreto.

12 Q. Now, was Officer DiLoreto on duty at the time, to
13 the best of your knowledge?

14 A. Yes, he was.

15 Q. And do you know where he was going at the time
16 that the accident occurred?

17 A. He was going to 10th and Parade to the New York
18 Lunch to assist on a backup for a fight call.

19 Q. Now, what did you do then, Corporal Kelm, after
20 you were asked to become involved in this investigation?

21 A. I proceeded to the scene, and arrived at the
22 scene. Spoke briefly to the initial officers on the scene
23 who had come upon the accident as a result of Officer
24 DiLoreto's summons for help. That was Sergeant Rick Erdely.

25 He related the findings as I found them and

1 observed them there; and advised me of several witnesses
2 with names, addresses, and phone numbers that may have seen
3 part of the accident.

4 Q. Okay. And what did you do then after you received
5 that information from Sergeant Erdely?

6 A. Then I started to conduct my investigation into
7 the accident; looking at the vehicles, checking visibly and
8 manually, checking to see if things were operative or
9 inoperative; checking the scene, itself, for evidence that
10 might be visibly seen or possibly could deteriorate over
11 time; and started to mark them off so that they could be
12 reviewed at a later date if at all necessary.

13 Q. Then what did you do?

14 A. Measured the scene, the streets, the lanes, the
15 skid marks. ID was there, and they photographed the scene,
16 the cars.

17 Q. Do you have the photographs with you that were
18 taken at the scene?

19 A. Yes, I do.

20 Q. Could you get those out, Corporal.

21 A. (Witness complies.)

22 Q. And you have a packet of photographs in your hand?

23 A. Yes.

24 Q. And are those the photographs that the ID unit
25 took at the scene?

1 A. Correct.

2 Q. When were these photos taken?

3 A. The night of the accident. And then, also, some
4 were taken in the daytime area -- or, in the daytime.

5 Q. Do they accurately depict the scene as you
6 observed it when you were there, personally?

7 A. Yes.

8 Q. What else did you do, Corporal Kelm, besides take
9 measurements there?

10 A. In regards to the accident, after we -- after I
11 would have completed the scene, and it was secured up there,
12 then I proceeded to the hospital to check on the two
13 drivers.

14 The female driver, Mrs. George, her medical
15 condition was unstable and she was unable to be spoken with.
16 I then met with Patrolman DiLoreto and talked to him in
17 regards to the accident, if he could relate to me what he
18 recalled about it, how he was driving.

19 Q. And did, in fact, Officer DiLoreto give you a
20 version of what happened in the accident?

21 A. Yes, he did.

22 Q. What did Officer DiLoreto tell you about the
23 accident?

24 A. He was finishing up on an alarm call at the
25 Maennerchor Club when a fight call had come out for the New

1 York Lunch at 10th and Parade. He was finishing up with
2 that, and he then started to proceed over 16th Street to
3 Parade Street to backup as an assisting unit.

4 Q. So he would have gone east on 16th from the area
5 of the Maennerchor to Parade Street?

6 A. Correct.

7 Q. Then what did he do?

8 A. Then he would proceed north on Parade Street. I
9 asked him if he recalled how fast he was going, and he said
10 not very fast. He was -- it had been several minutes and he
11 was just going to backup the other unit. If he had to
12 guess, he'd say he was doing 35 to 45.

13 Q. Is there anything else Officer DiLoreto told you
14 about the accident?

15 A. Yes. He said that as he was coming up from
16 underneath the railroad underpass, there's a slight incline
17 there, and as he was breaking the crest, he saw headlights
18 and they were in his lanes of traffic. When he realized
19 that they weren't going over, he applied his brakes and
20 looked for a way out and started to go to the right in an
21 attempt to avoid the accident.

22 Q. And from your investigation of the accident scene,
23 could you tell in what lane of traffic the accident occurred
24 in?

25 A. Yes.

1 Q. Do you need the photographs?

2 A. Yes. It's been some time since I looked at them.

3 Q. Here you go.

4 A. Okay. The accident happened in the right hand of
5 two northbound lanes of traffic at the intersection of east
6 14th and Parade.

7 Q. Okay. And I believe that you had testified to
8 this, but I just wanted to make sure we're clear. Officer
9 DiLoreto would have been heading north on Parade Street?

10 A. Correct.

11 Q. And the other vehicle, apparently, was making a
12 left-hand turn on 14th Street?

13 A. Correct.

14 Q. And the impact occurred in Officer DiLoreto's lane
15 of travel?

16 A. Correct.

17 Q. What else were you able to ascertain from your
18 investigation of the scene?

19 A. In regard to Officer DiLoreto's attempting to stop
20 and swerve from having contact, we measured off skid -- or,
21 excuse me, I measured off two front sets of skid marks. The
22 driver's front being 72-feet-long, and the passenger's front
23 being 6-feet-long from start of skid to impact with the
24 vehicle.

25 Q. Okay. And I believe you had testified, but I just

1 want to make sure that I have this straight, that Officer
2 DiLoreto estimated his own speed between 35 and 45?

3 A. Yes. Said if he had to guess.

4 Q. What did you do then after you obtained those
5 measurements regarding skid marks? What does your training
6 tell you you can do with that information?

7 A. Well, then you can apply those skid marks to
8 determine speed from the start of the impact -- excuse me,
9 from the start of the skid to the end of that skid.

10 Q. Okay. So in your efforts, the speed that you're
11 attempting to ascertain is the speed at the beginning of the
12 skid mark, in essence?

13 A. At the end.

14 Q. At the end?

15 A. Yes.

16 Q. Okay. So what do you do then after you take those
17 measurements?

18 A. You apply that to a standard formula, and you come
19 up with the results. In this case, I came up with 38 miles
20 per hour.

21 Q. Okay. This formula that you indicated, could you
22 explain that in a little more detail for us?

23 A. The formula is the speed --

24 THE WITNESS: Do you want me to write it down,
25 Judge?

1 THE COURT: Go ahead.

2 A. You take the speed, and we'll say that it's 25,
3 and you have a standard constant of 30, and then you
4 multiply that times the drag factor.

5 Q. How do you determine what the drag factor is?

6 A. Well, the drag factor, you can run series of tests
7 on, or on the pavement, itself, by taking another vehicle
8 comparable in size, et cetera, and traveling at the speed to
9 come up with that. Or you can take -- which I did, you can
10 take a standard chart, which gives you the figures to use.
11 And that's where I've got the drag factor of 60.

12 The drag factor is based on that it's an asphalt
13 roadway, it's a traveled asphalt roadway, it's not new, and
14 it's not so heavily traveled that it's polished. And if --
15 and dry weather at less than 25 miles an hour, it would show
16 a drag factor of point 60 to point 80, so you take the
17 median, which would be point 70.

18 Q. And this comes from where?

19 A. This comes out of a booklet supplied by the
20 Training Institute of Northwest University in Evanston,
21 Illinois.

22 Q. So as I understand it then, the formula involves
23 squaring the speed and then dividing that by the constant
24 times the drag factor?

25 A. Correct. (Witness reviews notes.) So, if at 35

1 miles an hour, as Office DiLoreto -- well, Office DiLoreto
2 said he was doing 35 to 45 miles an hour. So I took the
3 lowest at 35, and then I applied that through the formula.
4 So if you take the 35 and you square that, you have 1,225
5 feet. And then you multiply the drag factor of 70 times the
6 30, the constant figure, and you have 21. And then you come
7 up with 58.3 feet.

8 Q. So in other words, if I understand it, according
9 to the formula, if you were going 35 miles an hour, you
10 should be able to stop in 58.3 feet?

11 A. Correct.

12 Q. And what did you say the skid marks were in this
13 case?

14 A. 72 and 69. I used 70, and -- to determine my
15 speed of 38 miles an hour.

16 Q. Okay. Now, what were the conditions at the time
17 of the accident like?

18 A. As I recall, it was a clear, cool night. There
19 wasn't any rain.

20 Q. And are you familiar with the intersection where
21 the accident occurred?

22 A. Yes.

23 Q. And the approach to it from the direction that
24 Officer DiLoreto was driving?

25 A. Yes.

1 Q. What would his visibility have been like as he
2 approached, heading north, from 16th on Parade Street?

3 A. Well, his vision from 16th street, heading north,
4 is hampered because of having to go down a dip with the
5 railroad tracks above it. And then coming up and out of it,
6 you're coming up out of a rise, like I stated earlier. And
7 somewhere in that rise area, you start to see the area
8 further north.

9 And then you travel, probably, I'll say 100 feet
10 before you come to East 14th Street heading east -- excuse
11 me, heading west, because the intersection is offset. And
12 then you would have, roughly, another couple of hundred feet
13 before you hit the eastbound 14th Street intersection where
14 the accident happened.

15 Q. Now, you mentioned that as you approached the
16 overpass, the overpass is going to somewhat obstruct your
17 view?

18 A. Correct.

19 Q. What happens when you're going underneath it? Is
20 your view clear at that point?

21 A. No. It is not, because of the rise as you're
22 coming up and out.

23 Q. What else did you do then as a result of your
24 investigation?

25 A. As a result of the investigation, I could see that

1 there was a speed factor here involved in regards to the
2 accident. If, in fact, the Officer was doing 35 miles an
3 hour, he should have been able to stop within roughly
4 60 feet before impact.

5 There were several impacts. The first one was
6 hitting Mrs. George's S-10 pick-up truck, that was
7 devastating enough. And then continuing on for an
8 additional 12-some-odd feet, hitting a telephone pole,
9 causing major damage to the cruiser there, and then spinning
10 off of that and continuing to slide down the road an
11 additional 30-some odd feet before coming to rest.

12 Through my experience as a police officer, as an
13 accident investigator, you know, looking at thousands of
14 accident scenes over the years, and investigating numerous,
15 serious, and fatal accidents; I could see that there was a
16 speed problem here involved, and that my training didn't
17 allow me to go any further.

18 Q. Okay -- I'm sorry did you have something else?

19 A. No, that's it.

20 Q. The photographs that we talked about before, do
21 any of the photographs show the damages that you were just
22 talking about and the series of impacts?

23 A. Yes.

24 Q. Could you show us those, also.

25 A. (Witness complies.) Who do you want to have this?

1 Q. Just show the Judge.

2 THE COURT: Counselor.

3 THE WITNESS: That's the final resting area,
4 Judge. This is the driver's front of the vehicle.
5 This is the passenger front of the vehicle that
6 made contact with the telephone pole. There's the
7 interior of the cruiser. Another shot of the
8 cruiser. Another shot of both vehicles. Resting
9 spot of the cruiser sitting in the back bed of the
10 pick-up truck. Interior of the pick-up truck.
11 Pick-up truck. That's a grayish bumper. There's
12 the pick-up truck, again.

13 MR. VOGEL: Do any of the photos that you have of
14 the scene show us the perspective of the distance
15 that we're talking about with these impacts? Do
16 you have any that show that, Corporal?

17 THE WITNESS: This is part of the initial 70-some
18 foot of skid. And then impact with the vehicle.
19 And then skidding up to the pole. This's a night
20 shot. There's an aerial view of the skid impact
21 hitting the pole, and coming off the pole, and
22 coming to a stop.

23 MR. VOGEL: Where is the final resting place?

24 THE WITNESS: Down in there. From the pole to the
25 final rest, is 30-some feet.

1 THE COURT: We'll go back to the second thing in
2 relation to -- just to make sure I understand it.
3 You're stating that -- where was the truck in
4 relationship to this one?

5 THE WITNESS: Okay. This 14th Street one.

6 THE COURT: Right.

7 THE WITNESS: And this is looking north. So the
8 cruiser is coming northbound, in the right-hand
9 lane. The pick-up truck is starting to make a
10 left-hand turn to head east on East 14th when it's
11 struck by the cruiser.

12 THE COURT: So it's pushed all the way back?

13 THE WITNESS: Well, they hit somewhat in this
14 fashion (indicates) with the cruiser, and then
15 they hit, and they have secondary impact. They're
16 continuing on. The cruiser hits the pole and they
17 start to slide down, and the cruiser comes back
18 into the truck, and comes to rest down here
19 (indicating) on the back end of the pick-up truck.

20 THE COURT: Okay.

21 BY MR. VOGEL:

22 Q. Thank you, Corporal. As a result then of your
23 investigation, what action did you take?

24 A. After reviewing all of the findings of the
25 accident, and taking into consideration all the statements,

1 and as a result of my calculations, I filed a charge of
2 driving at an unsafe speed.

3 MR. VOGEL: Thank you, Corporal. That's all the
4 questions that I have.

5
6 CROSS-EXAMINATION

7 BY MR. MARKHAM:

8
9 Q. Corporal, as part of your duties and
10 responsibilities, did you complete an accident report
11 concerning this incident?

12 A. Yes, I did.

13 Q. Let me show you what I have. I'm assuming it's a
14 copy of the report that you would have.

15 A. Okay.

16 Q. Page through it for a moment just to make sure
17 that what I have is a complete copy of the report.

18 A. (Witness complies.) 11 pages.

19 Q. Is that complete then?

20 A. There's 11 pages of the official statement, it's a
21 crash report.

22 Q. So this is a complete copy?

23 A. Of the crash report, yes.

24 Q. I have a couple questions about this. These pages
25 are numbered at the top?

1 A. Correct.

2 Q. You completed this report?

3 A. Yes.

4 Q. And this is a product of your investigation?

5 A. Yes.

6 Q. On Page 3 of the report, okay? See where I'm at?
7 Do you have Page 3 in front of you?

8 A. Yes.

9 Q. At the top we have information relating to the
10 driver of the other vehicle, Jennifer George.

11 A. Yes.

12 Q. And there's a block indicated, where it's entitled
13 "Alcohol slash Drugs Suspected."

14 A. Yes.

15 Q. You checked alcohol?

16 A. Yes.

17 Q. What led you to conclude that she was under the
18 influence of alcohol?

19 MR. VOGEL: Your Honor, at this point in time, I'm
20 going to object.

21 THE COURT: Sustained.

22 MR. VOGEL: Thank you.

23 THE COURT: Why don't we start there. He hasn't
24 given any testimony as to that, and we need a
25 little bit of a foundation.

1 Q. I'm going to proceed and cover that. At the
2 bottom, you have information relating to Officer DiLoreto,
3 correct?

4 A. Correct.

5 Q. And there's a spot where you're supposed to
6 indicate vehicle code violations?

7 A. Correct.

8 Q. None are indicated; correct?

9 A. Not on the preliminary report, no.

10 Q. Is my copy different than --

11 A. No. Your first eight pages of the crash report
12 are your preliminary report. So you fill out with
13 information that you readily know, then your investigation
14 continues. And through the investigation, after Page 8,
15 there's several additional pages with -- which relate to my
16 continuous investigation into this, and the last paragraph
17 on Page 11.

18 Q. That talks about, again, this issue of speed?

19 A. About the final charges that -- well, those are
20 the charges that are brought against the other party if
21 at -- if at an appropriate time.

22 Q. What are those charges?

23 A. Driver No. 1 is to be charged with 3322, vehicle
24 turning left; 4581, seat belt; 3731(a)14, driving under the
25 influence of alcohol and/or a controlled substance.

1 Q. Driver No. 1 is Jennifer George?

2 A. Correct.

3 Q. Let's turn to Page 6 of your report.

4 A. (Witness complies.) Okay.

5 Q. At the bottom left-hand corner, there's a block
6 entitled "Indicated Prime Factor."

7 A. Correct.

8 Q. What does it mean, Indicated Prime Factor?

9 A. Your initial investigation at the scene. That
10 initial -- that Indicated Prime Factor, that last paragraph
11 there, if you go back over to the right column and you come
12 under Driver Action D, you come down through here, and you
13 have the first series of blocks is for Unit No. 1, and the
14 second series is for Unit No. 2.

15 The initial investigation showed that the driver
16 No. 1 was making an improper or careless turn and that other
17 improper driving action is 98. With that in mind then, I
18 came down and initially indicated that the primary factor of
19 driver No. 1.

20 Q. And, again, driver No. 1 is Jennifer George?

21 A. Correct.

22 Q. Now, was an investigation undertaken regarding
23 whether Mrs. George had been drinking?

24 MR. VOGEL: Your Honor, I'm going to object.

25 THE COURT: Don't try to get through the back door

1 to get through the front.

2 MR. MARKHAM: The only purpose of this line of
3 questioning, Your Honor, is if I'm understanding
4 the Commonwealth's case in this accident was
5 caused by Officer DiLoreto, they're
6 investigation --

7 THE COURT: I think what they're saying is the
8 accident here may have been caused by both
9 parties.

10 MR. VOGEL: That's correct, Your Honor. It is not
11 our theory of the case -- I mean, this is not a
12 civil lawsuit where we're talking about
13 comparative negligence. The issue here is whether
14 or not Officer DiLoreto violated this particular
15 section. It's not our theory that he's the sole
16 cause of the accident.

17 MR. MARKHAM: Okay.

18 THE COURT: I'm not sure what happens in the City
19 of Erie, but I do know the Vehicle Code very well,
20 and the court procedures, evidence, and theory.

21 MR. MARKHAM: I'm not questioning Your Honor's --

22 THE COURT: 32 years we're talking about.

23 BY MR. MARKHAM:

24 Q. Now, let's talk a second about the intersection
25 and how it's layed out. I know you have some photographs.

1 I have a map, also, that might help us better understand the
2 surroundings of the accident. I think that's important.

3 This is a map prepared for tax purposes, but it
4 does have the layout of the streets that are at issue here.
5 This shows Parade Street?

6 A. Yes.

7 Q. This would be the tracks?

8 A. Correct.

9 Q. There's a dip there?

10 A. Yes. That's where you go underneath the railroad
11 tracks.

12 Q. And above that would be East 15th, East 14th
13 heading west, and East 14th heading east.

14 A. Correct.

15 Q. And this is where the accident happened?

16 A. Correct.

17 Q. And this intersection here --

18 THE WITNESS: Judge, just so you don't get
19 confused, this should be a straight line, there is
20 no roadway here.

21 THE COURT: The Court is very familiar with the
22 area.

23 MR. MARKHAM: There's a little cut out there, but
24 it's not a roadway.

25 Q. All right. And this intersection here is a

1 straight and level intersection?

2 A. Correct.

3 Q. And it's controlled by a traffic light?

4 A. Correct.

5 Q. And I think you testified that the dip here, when
6 you go into the dip, as you're heading north, for a moment
7 or so you lose sight because of the rise in the crest?

8 A. Correct.

9 Q. And then when you come up, slowly, as you would
10 any hill, you'd start to regain vision northward?

11 A. Yes.

12 Q. And would you agree that at the point at which you
13 regain vision northward, would be somewhere before East 15th
14 Street?

15 A. More than likely, yes.

16 Q. So from this point -- from this point, when
17 Officer DiLoreto reached this point in this roadway, he
18 could have had a clear shot in his vision anyway of
19 northward?

20 A. Somewhere in that area, yes, he should.

21 Q. And this happened in the early morning hours?

22 A. Yes.

23 Q. So it was dark out?

24 A. Correct.

25 Q. And Mrs. George would have likewise, at that

1 point, been able to see Officer DiLoreto's vehicle?

2 A. Correct.

3 Q. No obstructions of her vision?

4 A. No. Nothing in the roadway that would obstruct
5 vision.

6 Q. As he approached, at least when he got within 70
7 feet or so of the intersection, is when she began her turn
8 because we have the skid marks?

9 A. I don't know where she was in regards to when he
10 started to apply his brakes. As I testified, when I
11 questioned him at the hospital, he saw the headlights, he
12 determined that they were in his lane of traffic, and that
13 they weren't moving out. So then he applied his brakes and
14 swerved to the right looking for a way out to avoid impact.

15 Q. So you're not sure exactly where he was in
16 relation to the intersection when she first began her turn?

17 A. No. I don't know where he was at.

18 Q. At that 70 feet or so we know that he applied his
19 brakes, that's when the skid marks started?

20 A. Correct.

21 Q. Did he tell you that when he saw her vehicle, he
22 did not see any kind of turn signal?

23 A. Correct. He did not see one.

24 Q. He had his headlights illuminated?

25 A. Correct.

1 Q. She had her headlights illuminated?

2 A. Correct.

3 Q. Now, you used a formula to try to determine
4 Officer DiLoreto's speed --

5 A. Distance. No. It was his distance.

6 Q. You tried to use that to try to determine his
7 speed as of the point of him starting to brake?

8 A. To finish.

9 Q. And you told us, I had it written down here, in
10 terms of distances, that when he would have first came up
11 from under the overpass, there was about 100 feet or so --

12 A. That's a guess on my part.

13 Q. -- and then a couple hundred feet after that
14 before the point of impact?

15 A. Correct.

16 Q. So about 300 feet or so from the point where he
17 could see and the impact occurred?

18 A. Yes.

19 Q. Now, your speed estimates are based upon the
20 length of the skids?

21 A. Correct.

22 Q. So based on your formula, you can tell us, within
23 some reasonable certainty, his speed at the moment of
24 starting at the skid?

25 A. Correct.

1 Q. You can't tell us how fast he was going 100 feet
2 south, not by your formula?

3 A. No.

4 Q. You can't tell us his speed as he was under this
5 overpass by your formula?

6 A. No.

7 Q. All we know is within 72 feet of the impact, he
8 was going, according to your formula, 38 miles an hour?

9 A. Correct.

10 Q. Now, you cited him for driving too fast for
11 conditions.

12 A. Driving at an unsafe speed.

13 Q. Well, this section includes driving too fast -- or
14 unsafe conditions, driving too fast for conditions existing,
15 or the short or clear distance?

16 A. Correct.

17 Q. Did you charge him distinctly under one of those
18 theories? Was it too fast for conditions, was it unsafe
19 speed?

20 A. All things considered.

21 Q. And was one of those things considered this
22 overpass?

23 A. The overpass, the rise in the hill.

24 Q. Okay.

25 A. The intersection.

1 Q. Okay. But you told us you didn't know how fast he
2 was going at the overpass or at the rise in the hill?

3 A. No.

4 Q. In terms of this intersection, this is a
5 two-street intersection at 14th -- at this location. Parade
6 and 14th, correct?

7 A. Correct.

8 Q. It's a straightaway?

9 A. Yes.

10 Q. Weather was clear?

11 A. Yes.

12 Q. Roadway was dry?

13 A. Yes.

14 Q. The intersection is controlled by a traffic light?

15 A. Correct.

16 Q. The traffic light was green for Officer DiLoreto?

17 A. Correct.

18 Q. What was it about the condition of this
19 intersection that made his speed unsafe? Was it the
20 intoxicated condition of Jennifer George?

21 A. Taking into consideration you're going through an
22 intersection, although you, as any driver, are aware that
23 you are driving on any street, you have to be prepared and
24 anticipate the unexpected, even though most of us don't
25 anticipate anything of that nature.

1 So you have to be aware that you're passing
2 through an intersection, and be prepared for -- if there was
3 traffic that would be allowed to come out of that way, you
4 have to be able to react to that also. If there was a stop
5 sign there or a red light and they were busting -- you know,
6 going through it, you have to be aware of the fact that
7 you're going through an intersection where other traffic is
8 and may create a hazard. In this case, a turn.

9 Q. Other than Jennifer George's vehicle, you don't
10 know of any other vehicles in that vicinity?

11 A. No.

12 Q. No pedestrians crossing the street in front of
13 these vehicles?

14 A. No.

15 Q. So the only potential hazard that we're talking
16 about, apparently, is the hazard presented by Jennifer
17 George as she was making this illegal turn.

18 MR. VOGEL: Your Honor, I'm going to object again.
19 The statute talks in terms of potential hazard,
20 not simply the facts of what occurred in this
21 case. The light could change, for example.

22 Q. The light -- well, let me skip here just a little
23 bit and talk about this formula of yours.

24 THE COURT: By the way, I just want to make sure,
25 before you get too much further, I don't know who

1 the stenographer is, and who she's taking this
2 down for.

3 MR. VOGEL: At our request, Your Honor.

4 THE COURT: The reason why I'm asking is because
5 you made the statement about an illegal turn. I
6 don't know if Attorney Vogel's objection was to
7 the facts that were given or the statement of the
8 illegal turn. Also, because there's been no
9 evidence of an illegal turn as of yet. And I
10 don't think I missed that point.

11 So I just want to make sure that the
12 stenographer isn't having a self-serving statement
13 put in there that will be used to haunt somebody
14 later on in a civil trial.

15 MR. MARKHAM: I'm sorry, Your Honor, I thought
16 Corporal Kelm indicated that --

17 THE COURT: I don't believe he said anything about
18 an illegal turn. He said there were indications
19 of activity, but I don't remember anything about
20 an illegal turn.

21 MR. MARKHAM: I think I read too much into what he
22 did say. I'll cover that.

23 THE COURT: That's what I want to find out. I
24 want to make sure we clarify that, and what
25 Attorney Vogel's objection was.

1 MR. VOGEL: Thank you, Your Honor.

2 BY MR. MARKHAM:

3 Q. Corporal, did you investigate whether Jennifer
4 George violated any provisions of the Vehicle Code?

5 A. Through the investigation -- like I stated, the
6 initial investigation indicates that Officer DiLoreto was
7 heading northbound with the green light and has the right of
8 way. The oncoming vehicle, being Mrs. George, is heading
9 southbound, and she is making a left-hand turn to head east
10 on East 14th Street. Office DiLoreto did not see any turn
11 signal. We --

12 THE COURT: Excuse me, that's where I agree that
13 he did say that there is a vehicle turning left,
14 that's already mentioned in this, but I thought it
15 was in regard to the turn signal that was not
16 indicated. And, again, maybe I'm wrong, but I
17 just want to make sure that we don't put in
18 something that shouldn't be there.

19 MR. MARKHAM: If I could continue with the
20 questions?

21 THE COURT: Go ahead.

22 Q. Corporal, did you reach a determination whether
23 she violated the provisions of the Vehicle Code dealing with
24 left turns?

25 A. Yes. She's -- the positioning of her car, at

1 impact indicated that she was in oncoming lanes of traffic.
2 It indicated that the angle of her vehicle indicated that
3 she was in the process of making -- or attempting to enter
4 onto East 14th Street off of Parade Street. And she was at
5 an intersection, in the oncoming lane, which had the right
6 of way according to the traffic signal. And based on that,
7 that's where the turn comes from.

8 Q. What --

9 A. The charge for the turn.

10 Q. Illegal turn?

11 A. Yes.

12 Q. I want to ask you some questions, if I can, about
13 the formula that you were using.

14 A. Yes.

15 Q. If I'm understanding this correctly, by using the
16 length of a skid mark, you're trying to figure out speed of
17 the vehicle at the time the brakes are applied?

18 A. Correct.

19 Q. And if I'm correct, some of the underlying
20 principals of that are, it's known that a certain amount of
21 force is needed to leave -- a force of speed is needed to
22 leave a skid mark at a certain length with a given
23 coefficient of friction, which you've called the drag
24 factor. Am I stating the principals correctly, in general?

25 A. Pretty much, yeah.

1 Q. So you use the length of the skid mark with this
2 formula to try to back into the actual speed of the vehicle?

3 A. Correct.

4 Q. From the time the brakes are first applied and the
5 skid started?

6 A. (Witness nods head.)

7 Q. Now, your formula, I was looking at that, doesn't
8 seem to include some things that common sense would indicate
9 would affect, in some way, the stopping distance. For
10 instance, does your formula distinguish between the number
11 of tires in a skid? Because it would seem that if you have
12 three tires in a skid, it would stop quicker, one tire, it
13 would stop slower. Does your formula take that into
14 account?

15 A. No. These formulas are basically based on a
16 four-wheel vehicle.

17 Q. Four-wheel skidding?

18 A. Four-wheel vehicle. You can take one or all of
19 the skids. In this situation, you have a vehicle, which has
20 ABS brakes on it, and it's front-wheel drive, and the front
21 brakes kick in first. It was determined that the front
22 brakes left that skid.

23 Q. I understand that part. But what I'm trying to
24 figure out is whether your formula makes a distinction in
25 its calculations if there is one wheel skidding, two wheels

1 skidding, three wheels skidding, four wheels skidding?

2 A. No. We just need the one skid to indicate that
3 there was skidding or attempting at braking there.

4 Q. But do you understand what I'm getting at? It
5 would seem that the stopping distance would be affected
6 somehow by the number of tires that are locked up and
7 skidding.

8 MR. VOGEL: Your Honor, I'm going to object. I'm
9 not sure if there was a question in there.

10 MR. MARKHAM: I'm trying to see if he agrees with
11 my understanding of this.

12 THE COURT: I think if you're going to ask that
13 question, you're also asking it with a
14 double-edged sword, because if you're going to use
15 that logic that two wheels give a greater distance
16 than four wheels locked up, then we may have a
17 problem with the speed.

18 MR. MARKHAM: I guess my point is, Your Honor, I
19 understand what Your Honor is saying, but I'm not
20 sure what his formula is based on. Is it based on
21 one wheel skidding, two wheels skidding, three
22 wheels skidding?

23 A. It's on the skid marks that are left at the scene.

24 Q. Your formula doesn't permit you to factor in the
25 number of tires actually skidding?

1 A. There's no indication there of four tires being
2 used. It's the skid left at the scene.

3 Q. Another factor that would seem to affect the
4 stopping would be the weight of the vehicle. You would
5 think a heavier vehicle going at the same speed as a lighter
6 vehicle would take longer to stop. But your formula, if I'm
7 correct, doesn't allow you to factor in the weight of the
8 vehicle; does it?

9 A. No. There's no additional figures there for
10 weight. It's based on the skid mark that is left by the
11 vehicle.

12 Q. Did you determine the speed of Mrs. George's
13 vehicle at the moment of impact?

14 A. No.

15 Q. And based upon your background, would the force in
16 a two-vehicle accident of both vehicles help us understand
17 what happens after impact?

18 A. I don't follow you.

19 Q. After this impact, the vehicles, you described
20 them swerving, and the police cruiser hitting a pole, and --

21 A. Yes.

22 Q. In order to tell us why that happened, wouldn't it
23 be helpful to know the speed of Mrs. George's vehicle?

24 A. No. You figure that when you look at the accident
25 scene and at the pictures, she's making a left-hand turn.

1 So her momentum is not towards the oncoming vehicle at all.
2 All the momentum is from the oncoming vehicle impact and
3 away from the scene where Mrs. George came from. So all the
4 force and momentum is going, basically, in a northeasterly
5 direction.

6 She's attempting to turn, Officer DiLoreto is
7 attempting to miss her and brake, they make contact as
8 they're both going in a northeasterly -- somewhat
9 northeasterly angle. They hit, they have secondary impact.
10 The cruiser ends up hitting a pole causing swerving by the
11 vehicles, and then the cruiser ends up coming to rest on the
12 back tailgate of the pick-up truck, and they continue to
13 slide away from the impact an additional 30-some feet.

14 Q. And you did talk about damage to the two vehicles.

15 A. Yes.

16 Q. Now, you're not trained, are you, to determine
17 speed based upon physical damage to the vehicles?

18 A. Crush factors and that, no.

19 Q. You're not trained in that?

20 A. No.

21 Q. There is a science that's recognized as being able
22 to try to estimate speeds based upon crush factors; isn't
23 there?

24 A. I'm not familiar with it. I don't have any
25 training.

1 Q. So you can't tell us how fast the vehicles were
2 going just based upon the damage that was left afterwards?

3 A. I am not trained in any of the formulas, or
4 science, or technology in that field. Mine is solely based
5 on the experience I have and the training I have.

6 MR. MARKHAM: That's all the questions I have,
7 Corporal. Thank you.

8 THE COURT: Redirect?

9 MR. VOGEL: No, Your Honor.

10 THE COURT: The Court just has one simple
11 question. What is the speed limit on Parade
12 Street?

13 THE WITNESS: It's 25 miles an hour.

14 MR. VOGEL: With that, Your Honor, the
15 Commonwealth will rest.

16 THE COURT: You can have a seat.

17 MR. MARKHAM: We have no further evidence to
18 present today, Your Honor.

19 THE COURT: I'm sort of puzzled, this is a summary
20 trial, which means when you say "today", are you
21 anticipating my decision already or something and
22 looking for a fight for another day.

23 MR. MARKHAM: No, Your Honor. I'm just saying we
24 rest. Okay. So the Court, after hearing the
25 testimony, has considered several things; and the

1 very first one is, the Section, itself. And it
2 states, very simply, a vehicle driving the speed
3 limit should stop within a sure, clear distance
4 ahead.

5 We then look at several other things. One,
6 we have an intersection, which is somewhat blinded
7 by the grade of the land, and an obstruction of an
8 overpass, and a reduced view until you come out of
9 that. So that would give cause to someone being
10 concerned as to speed.

11 We have traffic control signals, which would
12 be in the vicinity, and not being able to see them
13 from the intersection from the underpass would be
14 another concern. The fact that Parade Street is
15 an extremely busy street in Erie would be another
16 factor to look at.

17 And we, also, have to look at the particular
18 and special training of the police officers who
19 respond in a traffic situations and driving
20 situations.

21 So therefore, we have to then look at the
22 fact that it was 38 miles per hour as was
23 determined at the time of impact. It would be
24 logical to assume then that the vehicle was going
25 at a greater speed further back. It's not logical

1 to assume that the driver was going slower, and
2 sped up, and then hit. So it would give some rise
3 to the thought that it would be a greater speed
4 further back.

5 All that coupled with the idea of potential,
6 actual conditions, potential conditions being
7 other drivers, and the actual conditions being the
8 intersections, the lay of the land, the
9 obstructions, and so on, it leaves the Court to
10 believe that there is a violation of Section 3361.

11 And therefore, I am finding the defendant
12 guilty of the action and charging a fine and costs
13 of \$108. You do have the right to appeal this
14 decision within 30 days. By that, I mean you may
15 appeal this decision by going to the Clerk of
16 Courts Office within the next 30 days and applying
17 for an appeal, and you can present any evidence or
18 testimony at that time. Otherwise, the fine and
19 costs may be arranged with the secretary in the
20 outer office. Court's adjourned. Thank you.

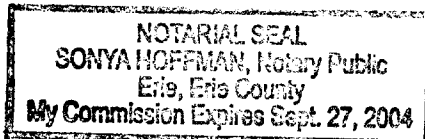
21
22 (Hearing concluded at 2:49 p.m.)
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C E R T I F I C A T I O N

I, Sonya Hoffman, a Court Reporter and
Notary Public in and for the Commonwealth of
Pennsylvania, do hereby certify that the foregoing
is a true and accurate transcript of my
stenographic notes in the above-captioned matter.

Sonya Hoffman
Court Reporter and Notary Public

Dated: *October 9, 2001*



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|---|--|--|---|---|
| -S- \$108 [1] 39:13 -'- '90s [1] 4:21 -.- .18 [1] 2:6 -1- 1 [6] 20:23 21:1,13,16,19 21:20 1,225 [1] 13:4 100 [3] 14:9 26:11 27:1 10th [2] 6:17 9:1 11 [3] 18:18,20 20:17 12 [1] 4:15 12-some-odd [1] 15:8 14 [1] 20:24 140 [1] 1:17 14th [13] 6:5 10:6,12 14:10,13 17:5,10 23:12 23:13 28:5,6 31:10 32:4 150 [1] 1:21 15th [2] 23:12 24:13 16501 [3] 1:12,17,21 16th [4] 9:2,4 14:2,3 1:53 [1] 1:10 -2- 2 [1] 21:14 2001 [1] 1:9 21 [1] 13:6 25 [3] 12:2,15 37:13 27 [1] 1:9 29-plus [1] 4:10 2:49 [1] 39:22 -3- 3 [2] 19:6,7 30 [4] 12:3 13:6 39:14,16 30-some [3] 15:11 16:25 36:13 300 [1] 26:16 32 [1] 22:22 3322 [1] 20:23 3361 [2] 3:5 39:10 35 [8] 9:12 11:2 12:25 13:2,3,4,9 15:2 3731 [1] 20:24 38 [4] 11:19 13:15 27:8 38:22 -4- 4 [1] 2:5 4/13/2001 [1] 6:4 45 [3] 9:12 11:2 13:2 | 4581 [1] 20:24 -5- 58.3 [2] 13:7,10 -6- 6 [1] 21:3 6-feet-long [1] 10:23 60 [3] 12:11,16 15:4 626 [1] 1:11 69 [1] 13:14 -7- 70 [5] 12:17 13:5,14 25:6 25:18 70-some [1] 16:17 72 [2] 13:14 27:7 72-feet-long [1] 10:22 -8- 8 [1] 20:14 80 [1] 12:16 -9- 98 [1] 21:17 -A- Abate [1] 1:11 able [7] 10:17 13:10 15:3 25:1 29:4 36:21 38:12 above [2] 14:5 23:12 above-captioned [1] 1:8 ABS [1] 33:20 accident [35] 4:12,13,18 5:9,23 6:5,16,23 7:3,7 8:3 8:10,17,20,23 9:14,21,22 9:23 10:4 13:17,21 14:14 15:2,13,14 17:25 18:10 22:4,8,16 23:2,15 35:16 35:24 accidents [3] 5:4,6 15:15 according [3] 13:8 27:8 32:6 account [1] 33:14 accurately [1] 8:5 action [4] 17:23 21:12,17 39:12 activity [1] 30:19 actual [3] 33:2 39:6,7 additional [5] 15:8,11 20:15 35:9 36:13 addresses [1] 7:2 adjourned [1] 39:20 admit [1] 5:4 advised [2] 6:4 7:1 aerial [1] 16:20 affect [2] 33:9 35:3 affected [1] 34:5 afternoon [1] 3:1 | afterwards [1] 37:2 again [5] 16:12 20:18 21:20 29:18 31:16 against [1] 20:20 ago [1] 4:21 agree [2] 24:12 31:12 agrees [1] 34:10 ahead [3] 12:1 31:21 38:4 alarm [1] 8:24 alcohol [4] 19:13,15,18 20:25 allow [2] 15:17 35:7 allowed [2] 5:12 29:3 amended [1] 3:6 amount [1] 32:20 angle [2] 32:2 36:9 anticipate [2] 28:24,25 anticipating [1] 37:21 anyway [1] 24:18 appeal [3] 39:13,15,17 applied [6] 9:19 13:3 25:13,18 32:17 33:4 apply [3] 11:7,18 25:10 applying [1] 39:16 approach [1] 13:23 approached [3] 14:2,15 25:6 appropriate [1] 20:21 area [7] 8:4 9:4 14:7,7 16:3 23:22 24:20 arranged [1] 39:19 arrived [1] 6:21 ascertain [2] 10:17 11:11 asks [1] 4:25 asphalt [2] 12:12,13 assignment [1] 4:11 assist [1] 6:18 assisting [1] 9:3 assume [2] 38:24 39:1 assuming [1] 18:13 attempt [1] 9:21 attempting [6] 10:19 11:11 32:3 34:3 36:6,7 Attorney [3] 1:16 30:6 30:25 authenticate [1] 4:25 avoid [2] 9:21 25:14 aware [3] 28:22 29:1,6 away [2] 36:3,13 -B- background [1] 35:15 backup [3] 6:18 9:3,11 based [13] 12:12 26:19 26:22 32:6 33:15 34:20 34:20 35:10,15 36:17,22 37:2,4 became [1] 6:2 become [2] 5:22 6:20 bed [1] 16:9 | began [2] 25:7,16 beginning [1] 11:11 belt [1] 20:24 best [1] 6:13 better [1] 23:1 between [2] 11:2 33:10 beyond [1] 5:4 bit [2] 19:25 29:23 blinded [1] 38:6 block [2] 19:12 21:5 blocks [1] 21:13 booklet [1] 12:19 bottom [2] 20:2 21:5 brake [2] 26:7 36:7 brakes [9] 9:19 25:10,13 25:19 32:17 33:4,20,21 33:22 braking [1] 34:3 breaking [1] 9:17 briefly [1] 6:22 brought [1] 20:20 bumper [1] 16:11 busting [1] 29:5 busy [1] 38:15 -C- calculations [2] 18:1 33:25 car [1] 31:25 careless [1] 21:16 cars [1] 7:16 case [7] 3:2 11:19 13:13 22:4,11 29:8,21 caused [2] 22:5,8 causing [2] 15:9 36:10 certain [2] 32:20,22 certainty [1] 26:23 cetera [1] 12:8 change [1] 29:21 charge [5] 5:24 6:4 18:1 27:17 32:9 charged [2] 3:3 20:23 charges [3] 20:19,20,22 charging [1] 39:12 chart [1] 12:10 check [1] 8:12 checked [1] 19:15 checking [3] 7:7,8,9 cited [1] 27:10 City [2] 1:11 22:18 civil [2] 22:12 30:14 clarify [1] 30:24 class [1] 4:19 clear [7] 10:8 13:18 14:20 24:18 27:15 28:10 38:3 Clerk [1] 39:15 client [1] 3:15 Club [1] 8:25 code [6] 3:4,5 20:6 22:19 31:4,23 | coefficient [1] 32:23 column [1] 21:11 coming [9] 9:15 14:5,6 14:22 15:11 16:21,22 17:8 36:11 commencing [1] 1:9 common [2] 5:10 33:8 Commonwealth [6] 1:1 1:15 3:2,13,19 37:15 Commonwealth's [1] 22:4 comparable [1] 12:8 comparative [1] 22:13 complete [5] 4:20 18:10 18:17,19,22 completed [2] 8:11 19:2 complies [4] 7:21 15:25 18:18 21:4 concern [1] 38:14 concerned [1] 38:10 concerning [1] 18:11 conclude [1] 19:17 concluded [1] 39:22 condition [4] 6:8 8:15 28:18,20 conditions [8] 13:16 27:11,14,14,18 39:6,6,7 conduct [1] 7:6 confused [1] 23:19 consideration [2] 17:25 28:21 considered [3] 27:20,21 37:25 constant [3] 12:3,23 13:6 contact [3] 10:20 16:6 36:7 continue [2] 31:19 36:12 continues [1] 20:14 continuing [3] 15:7,10 17:16 continuous [1] 20:16 control [1] 38:11 controlled [3] 20:25 24:3 28:14 cool [1] 13:18 copy [4] 18:14,17,22 20:10 coroner [1] 21:5 Corporal [17] 4:6,8,11 4:23 5:8,22 6:19 7:20 8:8 16:16 17:22 18:3,9 30:16 31:3,22 37:7 correct [43] 5:13 8:1 9:6 10:10,13,16 12:25 13:11 14:18 19:1 20:3,4,7,8 21:2 21:7,21 22:10 23:8,14,16 24:2,4,8,24 25:2,20,23,25 26:2,15,21,25 27:9,16 28:6,7,15,17 32:18,19 33:3 35:7 correctly [2] 32:15,24 costs [2] 39:12,19 counsel [2] 3:7 4:25 |
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|---|--|--|---|---|
| Counselor [1] 16:2 couple [4] 5:16 14:12 18:24 26:13 coupled [1] 39:5 court [41] 1:2,11 3:2,10 3:12,15,17 4:22,23 5:10 5:18 6:1 12:1 16:2 17:1,6 17:12,20 19:21,23 21:25 22:7,18,20,22 23:21,21 29:24 30:4,17,23 31:12 31:21 34:12 37:8,10,10 37:16,19,24 39:9 Court's [1] 39:20 Courts [1] 39:16 cover [2] 20:1 30:22 Craig [2] 1:20 3:11 crash [3] 18:21,23 20:11 create [1] 29:8 credentials [1] 4:25 crest [2] 9:17 24:7 Cross-Examination [2] 2:6 18:6 crossing [1] 29:12 cruiser [13] 6:6 15:9 16:7 16:8,9 17:8,11,14,16,17 35:20 36:10,11 crush [2] 36:18,22 current [1] 4:11 cut [1] 23:23 | 31:6,10 36:6 DiLoreto's [5] 6:24 10:14,19 25:1 26:4 dip [4] 14:4 23:9 24:5,6 Direct [2] 2:5 4:1 direction [2] 13:23 36:5 distance [8] 16:14 26:5 26:5 27:15 33:9 34:5,15 38:3 distances [1] 26:10 distinction [1] 33:24 distinctly [1] 27:17 distinguish [1] 33:10 District [2] 1:10,16 dividing [1] 12:23 doesn't [3] 33:7 34:24 35:7 door [1] 21:25 double-edged [1] 34:14 down [10] 11:24 14:4 15:10 16:24 17:17,18 21:12,18 26:9 30:2 drag [9] 12:4,5,6,11,12,16 12:24 13:5 32:23 drinking [1] 21:23 drive [1] 33:20 driver [10] 8:14 19:10 20:23 21:1,12,15,19,20 28:22 39:1 driver's [2] 10:22 16:4 drivers [2] 8:13 39:7 driving [13] 3:4 8:18 13:24 18:2 20:24 21:17 27:10,12,13,14 28:23 38:2 38:19 Drugs [1] 19:13 dry [2] 12:15 28:12 duly [1] 3:24 duties [1] 18:9 duty [1] 6:12 | Esquire [2] 1:16,20 essence [1] 11:12 estimate [1] 36:22 estimated [1] 11:2 estimates [1] 26:19 et [1] 12:8 Evanston [1] 12:20 evidence [5] 7:9 22:20 30:9 37:17 39:17 exactly [1] 25:15 Examination [2] 2:5 4:1 example [1] 29:21 excuse [4] 10:21 11:8 14:10 31:12 existing [1] 27:14 experience [2] 15:12 37:5 expert [1] 5:9 explain [1] 11:22 extremely [2] 6:8 38:15 | foot [1] 16:18 force [4] 32:21,21 35:15 36:4 formula [21] 11:18,21,23 12:22 13:3,9 26:3,22 27:2 27:5,8 29:23 32:13 33:2,7 33:10,13,24 34:20,24 35:6 formulas [2] 33:15 37:3 found [1] 6:25 foundation [1] 19:25 four [3] 34:1,16 35:1 four-wheel [3] 33:16,17 33:18 Frank [1] 1:10 friction [1] 32:23 front [10] 10:21,22,22 16:4,5 19:7 22:1 29:12 33:20,21 front-wheel [1] 33:20 full [1] 4:4 | helpful [1] 35:23 hill [3] 24:10 27:23 28:2 hit [5] 14:13 17:13,15 36:9 39:2 hits [1] 17:16 hitting [5] 15:6,8 16:21 35:20 36:10 Hoffman [1] 1:24 Holdnack [1] 1:24 home [1] 6:3 Honor [19] 3:1,14,20 5:20 19:19 21:24 22:3,10 29:18 30:3,15 31:1 34:8,18,19 37:9,14,18,23 Honor's [1] 22:21 hospital [2] 8:12 25:11 hour [10] 11:20 12:15 13:1,2,9,15 15:3 27:8 37:13 38:22 hours [1] 24:21 hundred [2] 14:12 26:13 |
| -D- D [2] 2:1 21:12 damage [4] 15:9 36:14 36:17 37:2 damages [1] 15:21 dark [1] 24:23 date [1] 7:12 days [2] 39:14,16 daytime [2] 8:4,4 dealing [1] 31:23 decision [3] 37:21 39:14 39:15 defendant [2] 1:19 39:11 defense [1] 4:24 Department [2] 4:7,9 depict [1] 8:5 describe [1] 6:1 described [1] 35:19 detail [1] 11:22 deteriorate [1] 7:10 determination [1] 31:22 determine [8] 5:17 11:8 12:5 13:14 26:3,6 35:12 36:16 determined [3] 25:12 33:21 38:23 devastating [1] 15:7 different [1] 20:10 DiLoreto [23] 1:3 3:3,6 3:8 6:11,12 8:16,19,22 9:13 10:9 11:2 13:1,1,24 20:2 22:5,14 24:17 28:16 | -E- E [2] 2:1 3:23 early [2] 4:21 24:21 east [15] 1:21 9:4 10:5 14:10,10 17:10,10 23:12 23:12,13,13 24:13 31:9 31:10 32:4 eastbound [1] 14:13 education [1] 4:17 efforts [1] 11:10 eight [1] 20:11 Eighth [1] 1:21 Elderkin [1] 1:20 end [4] 11:9,13,14 17:19 ends [2] 36:10,11 enter [1] 32:3 entitled [2] 19:12 21:6 Erdely [2] 6:24 7:5 Erie [7] 1:12,17,21 4:6,9 22:19 38:15 | -F- fact [5] 8:19 15:2 29:6 38:14,22 factor [18] 12:4,5,6,11,12 12:16,24 13:5 15:1 21:6,8 21:10,18 32:24 34:24 35:3 35:7 38:16 factors [2] 36:18,22 facts [2] 29:20 30:7 familiar [3] 13:20 23:21 36:24 fashion [1] 17:14 fast [9] 9:9,10 27:1,10,13 27:14,18 28:1 37:1 fatal [1] 15:15 feet [17] 13:5,7,10 14:9 14:12 15:4,8,11 16:25 25:7,18 26:11,13,16 27:1 27:7 36:13 female [1] 8:14 Ferguson [1] 1:24 field [1] 37:4 fight [3] 6:18 8:25 37:22 figure [4] 13:6 32:16 33:24 35:24 figures [2] 12:10 35:9 filed [1] 18:1 filing [1] 5:24 fill [1] 20:12 final [4] 16:3,23,25 20:19 finding [1] 39:11 findings [2] 6:25 17:24 fine [2] 39:12,18 finish [1] 26:8 finishing [2] 8:24 9:1 first [11] 3:23 4:18 6:1 15:5 20:11 21:13 25:16 26:10 33:4,21 38:1 follow [1] 35:18 follows [1] 3:24 | -G- general [1] 32:24 George [11] 8:14 19:10 21:1,20,23 24:25 28:20 29:17 31:4,8 36:3 George's [4] 15:6 29:9 35:12,23 given [3] 19:24 30:7 32:22 gone [1] 9:4 Good [1] 3:1 grade [1] 38:7 grayish [1] 16:11 greater [3] 34:15 38:25 39:3 green [2] 28:16 31:7 Gregory [2] 1:3 3:3 guess [4] 9:12 11:3 26:12 34:18 guilty [3] 3:16,17 39:12 | -I- ID [2] 7:15,24 idea [1] 39:5 illegal [7] 29:17 30:5,8,9 30:18,20 32:10 Illinois [1] 12:21 illuminated [2] 25:24 26:1 impact [19] 10:14,23 11:8 15:4 16:18,20 17:15 25:14 26:14,17 27:7 32:1 35:13 35:17,19 36:2,9,13 38:23 impacts [3] 15:5,22 16:15 important [1] 23:2 improper [2] 21:16,17 incident [1] 18:11 incline [1] 9:16 include [1] 33:8 includes [1] 27:13 indicate [3] 20:6 33:8 34:2 indicated [12] 11:21 19:12 20:8 21:6,8,10,18 30:16 31:16 32:1,2,2 indicates [2] 17:14 31:6 indicating [1] 17:19 indication [1] 35:1 indications [1] 30:18 influence [2] 19:18 20:25 information [5] 7:5 11:6 19:9 20:2,13 initial [6] 6:22 16:17 21:9 21:10,15 31:6 inoperative [1] 7:9 instance [1] 33:10 Institute [1] 12:20 interior [2] 16:7,10 intersection [21] 10:5 |
| | | | -H- Hall [1] 1:11 hampered [1] 14:4 hand [2] 7:22 10:4 haunt [1] 30:13 hazard [4] 29:8,15,16,19 he'd [1] 9:12 head [3] 17:10 31:9 33:6 heading [10] 10:9 14:2,3 14:10,11 23:13,13 24:6 31:7,8 headlights [4] 9:17 25:11,24 26:1 hearing [3] 1:8 37:24 39:22 heavier [1] 35:5 heavily [1] 12:14 held [1] 1:8 help [3] 6:24 23:1 35:16 | |

| | | | | |
|--|---|---|---|---|
| 13:20 14:11,13 22:24 23:17,25 24:1 25:7,16 27:25 28:4,5,14,19,22 29:2,7 32:5 38:6,13 intersections [1] 39:8 intoxicated [1] 28:20 investigate [1] 31:3 investigating [1] 15:14 investigation [20] 4:17 4:18 5:23 6:20 7:6 9:22 10:18 14:24,25 17:23 19:4 20:13,14,16 21:9,15,22 22:6 31:5,6 investigations [2] 5:5 5:9 investigator [5] 4:12,14 5:3 6:5 15:13 involved [8] 5:23 6:2,6 6:7,10,20 15:1,16 involves [1] 12:22 issue [3] 20:18 22:13 23:4 itself [3] 7:9 12:7 38:1 | left [8] 20:24 31:13,24 33:22 34:23 35:2,10 37:2 left-hand [5] 10:12 17:10 21:5 31:9 35:25 length [4] 26:20 32:16,22 33:1 less [1] 12:15 level [1] 24:1 light [7] 24:3 28:14,16 29:5,21,22 31:7 lighter [1] 35:5 likely [1] 24:15 likewise [1] 24:25 limit [2] 37:11 38:3 line [2] 22:2 23:19 location [1] 28:5 locked [2] 34:6,16 logic [1] 34:15 logical [2] 38:24,25 longer [1] 35:6 look [5] 35:24 38:5,16,17 38:21 looked [2] 9:20 10:2 looking [6] 7:7 15:13 17:7 25:14 33:7 37:22 lose [1] 24:7 lowest [1] 13:3 Lunch [2] 6:18 9:1 | met [1] 8:16 might [2] 7:10 23:1 miles [10] 11:19 12:15 13:1,2,9,15 15:2 27:8 37:13 38:22 mind [1] 21:17 Mine [1] 37:4 minutes [1] 9:10 miss [1] 36:7 missed [1] 30:10 moment [4] 18:16 24:6 26:23 35:13 momentum [3] 36:1,2,4 Monday [1] 1:9 morning [2] 6:3 24:21 most [1] 28:24 moving [1] 25:13 Mrs [8] 8:14 15:6 21:23 24:25 31:8 35:12,23 36:3 multiply [2] 12:4 13:5 | observed [2] 7:1 8:6 obstruct [2] 14:16 25:4 obstruction [1] 38:7 obstructions [2] 25:3 39:9 obtained [1] 11:4 occasion [1] 5:22 occupation [1] 4:5 occurred [6] 6:16 9:23 10:14 13:21 26:17 29:20 odd [1] 15:11 off [6] 7:11 10:20,21 15:10 16:21 32:4 offering [1] 5:3 office [6] 1:16 13:1,1 31:10 39:16,20 officer [24] 5:19 6:4,11 6:12,23 8:19,22 9:13 10:8 10:14,19 11:1 13:24 15:2 15:12 20:2 22:5,14 24:17 25:1 26:4 28:16 31:6 36:6 officers [2] 6:22 38:18 official [1] 18:20 offset [1] 14:11 On-scene [1] 4:18 oncoming [5] 31:8 32:1 32:5 36:1,2 one [15] 6:7 15:5 17:4,5 25:23 27:17,21 33:12,18 33:25 34:2,21 37:10 38:1 38:5 onto [1] 32:4 operative [1] 7:8 opinions [2] 5:2,12 opportunity [1] 5:18 order [1] 35:22 Otherwise [1] 39:18 outer [1] 39:20 overpass [8] 14:16,16 26:11 27:5,22,23 28:2 38:8 own [1] 11:2 | passenger's [1] 10:22 passing [1] 29:1 Patrolman [1] 8:16 pavement [1] 12:7 pedestrians [1] 29:12 PENNSYLVANIA [1] 1:1 per [2] 11:20 38:22 permit [1] 34:24 personally [1] 8:6 perspective [1] 16:14 phone [2] 6:3 7:2 photographed [1] 7:15 photographs [7] 7:17 7:22,24 10:1 15:20,21 22:25 photos [2] 8:2 16:13 physical [1] 36:17 pick-up [8] 15:6 16:10 16:10,11,12 17:9,19 36:12 pictures [1] 35:25 place [1] 16:23 plea [1] 3:17 plead [1] 3:15 Pleas [1] 5:10 point [15] 12:16,16,17 14:20 19:19 24:12,16,16 24:17 25:1 26:7,14,16 30:10 34:18 pole [9] 15:8 16:6,19,21 16:21,24 17:16 35:20 36:10 police [5] 4:6,9 15:12 35:20 38:18 polished [1] 12:14 positioning [1] 31:25 possibly [1] 7:10 potential [4] 29:15,19 39:5,6 preliminary [2] 20:9,12 prepared [3] 23:3 28:23 29:2 present [2] 37:18 39:17 presented [1] 29:16 Pretty [1] 32:25 previously [1] 5:10 primary [1] 21:18 Prime [3] 21:6,8,10 principals [2] 32:20,24 problem [2] 15:16 34:17 procedures [1] 22:20 proceed [4] 3:18 9:2,8 20:1 proceeded [2] 6:21 8:12 process [1] 32:3 product [1] 19:4 provisions [2] 31:4,23 purpose [2] 5:6 22:2 purposes [2] 5:14 23:3 pushed [1] 17:12 put [2] 30:13 31:17 |
| -J- J [1] 1:10 James [1] 1:16 Jennifer [7] 19:10 21:1 21:20 28:20 29:9,16 31:3 Jr [1] 1:11 Judge [4] 11:25 16:1,4 23:18 Justice [1] 1:10 | -M- M [1] 3:23 Maennerchor [2] 8:25 9:5 major [1] 15:9 makes [1] 33:24 manually [1] 7:8 map [2] 23:1,3 mark [6] 7:11 11:12 32:16 32:22 33:1 35:10 Markham [23] 1:20 2:6 3:9,11,11,16 5:2,16 18:7 22:2,17,21,23 23:23 30:15 30:21 31:2,19 34:10,18 37:6,17,23 marks [8] 7:15 10:21 11:5 11:7 13:12 25:8,19 34:23 Martin [1] 1:20 matter [1] 1:9 may [8] 3:18 5:2 7:2 22:8 29:8 34:16 39:14,19 mean [3] 21:8 22:11 39:14 means [1] 37:20 measured [3] 7:14 10:20 10:21 measurements [3] 8:9 11:5,17 median [1] 12:17 medical [1] 8:14 mentioned [2] 14:15 31:14 Messina [1] 1:20 | -N- N [1] 2:1 name [1] 4:4 names [1] 7:2 nature [1] 28:25 necessary [1] 7:12 need [3] 10:1 19:24 34:2 needed [3] 6:5 32:21,21 negligence [1] 22:13 new [3] 6:17 8:25 12:13 next [1] 39:16 night [3] 8:3 13:18 16:19 nods [1] 33:6 None [1] 20:8 north [7] 9:8 10:9 14:2,3 14:8 17:7 24:6 northbound [3] 10:5 17:8 31:7 northeasterly [3] 36:4 36:8,9 northward [3] 24:10,13 24:19 Northwest [1] 12:20 notes [1] 12:25 Nothing [1] 25:4 notice [1] 3:12 Now [12] 4:16 6:12,19 13:16 14:15 21:22 22:24 26:3,19 27:10 33:7 36:16 number [3] 33:10 34:6 34:25 numbered [1] 18:25 numbers [1] 7:2 numerous [1] 15:14 | -P- p.m [2] 1:10 39:22 packet [1] 7:22 Page [6] 18:16 19:6,7 20:14,17 21:3 pages [5] 18:18,20,24 20:11,15 Parade [14] 6:6,17 9:1,3 9:5,8 10:6,9 14:2 23:5 28:5 32:4 37:11 38:14 paragraph [2] 20:16 21:10 part [5] 7:3 16:17 18:9 26:12 33:23 particular [2] 22:14 38:17 parties [3] 6:7,8 22:9 party [2] 6:9 20:20 passenger [1] 16:5 | -O- object [4] 19:20 21:24 29:18 34:8 objection [2] 30:6,25 |

September 27, 2001

| | | | | |
|---|---|---|---|--|
| puzzled [1] 37:19 | 17:22 18:1 | signal [4] 25:22 31:11,15 32:6 | state [2] 1:12 4:4 | thousands [1] 15:13 |
| -Q- | results [1] 11:19 | signals [1] 38:11 | statement [4] 18:20 30:5 30:7,12 | three [3] 33:12 34:1,21 |
| qualifications [2] 4:24 5:17 | resume [1] 4:24 | simple [1] 37:10 | statements [1] 17:25 | through [12] 13:3 15:12 18:16 20:14 21:12,25 22:1 28:21 29:2,6,7 31:5 |
| qualified [2] 5:5,9 | reviewed [1] 7:12 | simply [2] 29:20 38:2 | states [1] 38:2 | times [3] 12:4,24 13:5 |
| questioned [1] 25:11 | reviewing [1] 17:24 | sitting [1] 16:9 | stating [2] 17:3 32:24 | tire [1] 33:12 |
| questioning [2] 22:3,21 | reviews [1] 12:25 | situation [1] 33:19 | statute [1] 29:19 | tires [5] 33:11,12 34:6,25 35:1 |
| questions [6] 5:16 18:4 18:24 31:20 32:12 37:6 | Rick [1] 6:24 | situations [2] 38:19,20 | stenographer [2] 30:1 30:12 | today [4] 5:15,24 37:18 37:20 |
| quicker [1] 33:12 | right [9] 9:20 10:4 17:6 21:11 23:25 25:14 31:7 32:5 39:13 | Sixth [1] 1:17 | stop [9] 10:19 13:10 15:3 16:22 29:4 33:12,13 35:6 38:3 | too [6] 27:10,13,14,18 29:25 30:21 |
| -R- | right-hand [1] 17:8 | size [1] 12:8 | stopping [3] 33:9 34:5 35:4 | took [2] 7:25 13:2 |
| R [1] 3:23 | rise [7] 14:6,7,21 24:7 27:23 28:2 39:2 | skid [26] 7:15 10:20,21 10:23 11:5,7,9,12 13:12 16:18,20 25:8,19 26:24 32:16,22 33:1,5,11,12,22 34:2,23 35:2,10 | straight [3] 11:1 23:19 24:1 | top [2] 18:25 19:9 |
| railroad [3] 9:16 14:5 23:10 | road [1] 15:10 | skidding [12] 16:19 33:17,25 34:1,1,1,3,7,21 34:21,22,25 | straightaway [1] 28:8 | towards [1] 36:1 |
| rain [1] 13:19 | roadway [7] 12:13,13 23:20,24 24:17 25:4 28:12 | skids [2] 26:20 33:19 | street [25] 1:12,17,21 6:6 9:2,3,5,8 10:9,12 14:2,3 14:10,13 17:5 23:5 24:14 28:23 29:12 31:10 32:4,4 37:12 38:14,15 | tracks [3] 14:5 23:7,11 |
| reach [1] 31:22 | roughly [2] 14:12 15:3 | skip [1] 29:22 | streets [2] 7:14 23:4 | traffic [21] 1:2,11 4:12 4:13,17,23 5:4 6:5 9:18 9:23 10:5 24:3 25:12 28:14,16 29:3,7 32:1,6 38:11,19 |
| reached [1] 24:17 | run [1] 12:6 | slash [1] 19:13 | struck [1] 17:11 | trained [3] 36:16,19 37:3 |
| react [1] 29:4 | -S- | slide [3] 15:10 17:17 36:13 | substance [1] 20:25 | training [6] 11:5 12:20 15:16 36:25 37:5 38:18 |
| read [1] 30:21 | S-10 [1] 15:6 | slight [1] 9:16 | summary [1] 37:19 | travel [2] 10:15 14:9 |
| readily [1] 20:13 | save [1] 4:22 | slower [2] 33:13 39:1 | summons [1] 6:24 | traveled [2] 12:13,14 |
| realized [1] 9:18 | saw [3] 9:17 25:11,21 | slowly [1] 24:9 | supplied [1] 12:19 | traveling [1] 12:8 |
| reason [1] 30:4 | scene [18] 6:21,22,22 7:9 7:14,15,18,25 8:5,11 9:22 10:18 16:14 21:9 34:23 35:2,25 36:3 | sole [1] 22:15 | supposed [1] 20:5 | trial [2] 30:14 37:20 |
| reasonable [1] 26:23 | scenes [1] 15:14 | solely [1] 37:4 | surroundings [1] 23:2 | tried [1] 26:6 |
| recalled [2] 8:18 9:9 | schooling [1] 4:16 | someone [1] 38:9 | Suspected [1] 19:13 | truck [10] 15:6 16:10,10 16:11,12 17:3,9,18,19 36:12 |
| received [4] 3:18 4:16 6:3 7:4 | science [2] 36:21 37:4 | someway [1] 34:6 | Sustained [1] 19:21 | try [5] 21:25 26:3,6 33:2 36:22 |
| recognized [1] 36:21 | seat [2] 20:24 37:16 | somewhat [4] 14:16 17:13 36:8 38:6 | swerve [1] 10:20 | trying [3] 32:16 33:23 34:10 |
| record [2] 4:5 5:8 | second [4] 4:19 17:1 21:14 22:24 | somewhere [3] 14:7 24:13,20 | swerved [1] 25:14 | turn [22] 10:12 17:10 21:3 21:16 25:7,16,22 29:8,17 30:5,8,9,18,20 31:9,10,15 32:7,9,10 35:25 36:6 |
| red [1] 29:5 | secondary [2] 17:15 36:9 | Sonya [1] 1:24 | swerving [2] 35:20 36:10 | turning [2] 20:24 31:13 |
| Redirect [1] 37:8 | secretary [1] 39:19 | sorry [2] 15:18 30:15 | sword [1] 34:14 | turns [1] 31:24 |
| reduced [1] 38:8 | section [5] 3:5 22:15 27:13 38:1 39:10 | sort [1] 37:19 | sworn [1] 3:24 | two [8] 6:7 8:12 10:5,21 33:25 34:15,21 36:14 |
| regain [2] 24:10,13 | secured [1] 8:11 | south [1] 27:2 | -T- | two-street [1] 28:5 |
| regard [3] 4:17 10:19 31:15 | see [12] 7:8 14:7,25 15:15 19:6 25:1,22,23 26:17 31:10 34:10 38:12 | southbound [1] 31:9 | tailgate [1] 36:12 | two-vehicle [1] 35:16 |
| regarding [2] 11:5 21:22 | seem [4] 33:8,11 34:5 35:3 | special [2] 4:16 38:18 | taking [4] 12:7 17:25 28:21 30:1 | |
| regards [4] 8:10,17 15:1 25:9 | self-serving [1] 30:12 | sped [1] 39:2 | talks [2] 20:18 29:19 | |
| relate [2] 8:17 20:15 | sense [1] 33:8 | speed [37] 3:4 5:12,17 11:2,8,10,11,23 12:2,8,23 13:15 15:1,16 18:2 20:18 26:4,7,19,23 27:4,12,19 28:19 32:16,21 33:2 34:17 35:5,12,23 36:17 37:11 38:2,10,25 39:3 | tax [1] 23:3 | |
| related [1] 6:25 | September [1] 1:9 | speeds [1] 36:22 | technology [1] 37:4 | |
| relating [2] 19:9 20:2 | Sergeant [2] 6:24 7:5 | spinning [1] 15:9 | telephone [2] 15:8 16:6 | |
| relation [2] 17:2 25:16 | series [4] 12:6 15:22 21:13,14 | Spoke [1] 6:22 | terms [3] 26:10 28:4 29:19 | |
| relationship [1] 17:4 | serious [2] 6:8 15:15 | spoken [1] 8:15 | testified [5] 3:24 10:7 10:25 24:5 25:10 | |
| remember [1] 30:19 | sets [1] 10:21 | spot [2] 16:9 20:5 | testimony [4] 5:6 19:24 37:25 39:18 | |
| report [11] 18:10,14,17 18:21,23 19:2,6 20:9,11 20:12 21:3 | short [1] 27:15 | square [1] 13:4 | tests [1] 12:6 | |
| Reported [1] 1:24 | shot [4] 16:7,8,20 24:18 | squaring [1] 12:23 | Thank [8] 3:20 5:20 17:22 18:3 19:22 31:1 37:7 39:20 | |
| Reporting [1] 1:24 | show [7] 12:15 15:21,24 16:1,14,16 18:13 | standard [3] 11:18 12:3 12:10 | theories [1] 27:18 | |
| represented [1] 3:6 | showed [1] 21:15 | start [7] 10:23 11:8,9 14:7 17:17 19:23 24:10 | theory [3] 22:11,15,20 | |
| representing [2] 3:9,13 | shows [1] 23:5 | started [7] 7:6,11 9:2,20 25:10,19 33:5 | therefore [2] 38:21 39:11 | |
| request [1] 30:3 | sight [1] 24:7 | starting [3] 17:9 26:7,24 | This's [1] 16:19 | |
| respond [1] 38:19 | sign [1] 29:5 | | thought [3] 30:15 31:14 39:3 | |
| responsibilities [1] 18:10 | | | | -U- |
| rest [6] 15:11 16:25 17:18 36:11 37:15,24 | | | | unable [1] 8:15 |
| resting [3] 16:3,8,23 | | | | under [8] 3:3,5 19:17 20:24 21:12 26:11 27:4 27:17 |
| result [5] 6:23 14:23,25 | | | | underlying [1] 32:19 |

| | | | | |
|--|--|--|--|--|
| <p>21:14 University [1] 12:20 unknown [1] 6:8 unsafe [6] 3:4 18:2 27:12 27:14,18 28:19 unstable [1] 8:15 up [20] 4:24 8:11,24 9:1 9:15 11:19,19 12:9 13:7 14:5,6,22 16:19 24:9 26:10 34:6,16 36:10,11 39:2 used [4] 13:14 26:3 30:13 35:2 using [2] 32:13,15</p> <hr/> <p>-V-</p> <p>v [1] 1:2 vehicle [38] 3:3,4,5 6:7 10:11,24 12:7 16:4,5,18 19:10 20:6,23 22:19 25:1 25:21 29:9 31:4,8,13,23 32:2,17 33:2,16,18,19 35:4,5,6,8,11,13,23 36:1 36:2 38:2,24 vehicles [10] 7:7 16:8 29:10,13 35:16,19 36:11 36:14,17 37:1 version [1] 8:20 versus [1] 3:3 vicinity [2] 29:10 38:12 view [4] 14:17,20 16:20 38:8 violated [3] 22:14 31:4 31:23 violation [1] 39:10 violations [1] 20:6 visibility [1] 14:1 visibly [2] 7:7,10 vision [6] 14:3 24:10,13 24:18 25:3,5 Vogel [25] 1:16 2:5 3:1 3:12,14,18,20 4:2 5:14,20 5:21 16:13,23 17:21 18:3 19:19,22 21:24 22:10 29:18 30:3 31:1 34:8 37:9 37:14 Vogel's [2] 30:6,25</p> <hr/> <p>-W-</p> <p>weather [2] 12:15 28:10 weight [3] 35:4,7,10 west [3] 1:17 14:11 23:13 wheel [2] 33:25 34:21 wheels [7] 33:25 34:1,1 34:15,16,21,22 within [7] 15:3 25:6 26:22 27:7 38:3 39:14,16 Witness [15] 7:21 11:24 12:25 15:25 16:3,17,24 17:5,7,13 18:18 21:4 23:18 33:6 37:13 witnesses [1] 7:1 words [1] 13:8</p> | <p>write [1] 11:24 written [1] 26:9 wrong [1] 31:16</p> <hr/> <p>-X-</p> <p>X [1] 2:1</p> <hr/> <p>-Y-</p> <p>years [4] 4:10,15 15:14 22:22 yet [1] 30:9 York [2] 6:17 9:1</p> | | | |
|--|--|--|--|--|